IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
CRIMINAL APPEAL No 962 of 1986
For Approval and Signature:

HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT
Versus
BAROT GANDABHAI @ VASUDEV KASHIRAM

Appearance:
1. Criminal Appeal No. 962 of 1986
MR HM PRACHHAK ld. APP for Petitioner No. 1
Respondent No. 1 served.
NOTICE SERVED for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 15/03/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE J.R.VORA)

This appeal is preferred by the State against the judgment and order dated 21.5.1986 passed by the ld. Addl. Sessions Judge, Mehsana in Sessions Case No. 134/1985 acquitting the accused - present respondents for the charge punishable under sec. 302 to read with

section 34 alternatively under sec. 114 of Indian Penal Code and for the charge under sec. 135 of the Bombay Police Act.

The incident in question occurred on 10.7.1985 at about 4.45PM near S.T. Bus Stand of village Udalpur. At the Udalpur bus stand, one S.T. Bus came from Mehsana. One Pramod Kashiram, Gandabhai @ Vasubhai - accused respondent no. 1, Jagdish Madanlal - accused respondent no. 2 and the deceased Govind alighted from the bus. Thereafter, the bus was started for its onward journey. After alighting from the bus, accused respondent no. 2 caught hold of the hands of the deceased and accused-respondent no. 1 - Gandabhai @ Vasubhai inflicted knife blows on the chest of the deceased. Thereafter, deceased Govind ran towards the village Udalpur pressing one of his hand on the wound. Both the accused-respondents chased him. When witnesses accosted accused-respondents, they ran away toward Mehsana road and deceased fell down on the ground near the cabin shop of one Daya Kachara. The information of this incident was conveyed to one Pramod Prahladji at Udalpur village, who happens to be husband of deceased's sister, who lodged complaint before Visnagar P.I., PW-14 Tehsildarsinh Vidyaram Yadav, at about 18.15 hrs. The crime was registered. The investigation was taken over by PW-14 and ultimately charge-sheet came to be filed before ld. J.M.F.C., at Visnagar, and in turn, the case was committed to the court of Sessions. It appears that, in all, prosecution has examined as many as 16 witnesses and produced on record necessary documents. After hearing both the sides, ld. trial judge was pleased to acquit accused-respondents for the charges levelled against them vide order and judgment impugned in this appeal.

Ld. APP Mr. Prachhak on behalf of the State was heard at length, while both the respondents are served with the notice. Along with ld. APP, we have gone through each corner of the evidence and the judgment and order under challenged entirely.

This is an appeal against the order of acquittal and it becomes the duty of this court to re-appreciate the evidence and if necessary, to reach at independent conclusion. In doing so, the established law should not be overlooked that such practice need not be followed as a matter of routine. If after re-appreciating the evidence, if from the same set of evidence, two views are possible and if the trial court has taken one view on the said evidence, unless it is found that the view taken by the trial court is either perverse or such that no

reasonable person could come to that conclusion or that such finding of the trial court is not based on any material on record, the finding of the trial court of acquittal cannot be interfered with because the rule of prudence requires that the Appellate Court should give proper weight and consideration to the views of the trial judge who has recorded the evidence and watched the demanner of the witnesses.

So far as this case is concerned, the material witnesses are two eye witnesses and they are Ex. 24 Gandaji Maganji and ex. 25 - Prahladji Pratapji, PW-2 and PW-3 respectively. In respect of PW-2 Ex. 24, ld. trial judge came to the conclusion from the material on record that firstly the house of this witness Gandaji Maganji is away from the scene of offence and in all probability, in the climate of summer, it was not possible for him to come out of the house and sit on a coat outside the house to witness the incident. Besides, other contradictions which are material as indicated by the ld. trial judge in his judgment in respect of this witness, if the prosecution case is examined by touch stone of probability, then it is clear that the say of the eye witness is that from the place of incident, the deceased ran toward the cabin for about 163 ft. is an improbability as has been confirmed by Medical Expert, PW-15 Ex. 42 Dr. Kokilaben Jayantilal, who stated in her evidence that deceased possibly could not have run up to a space of 200 ft. because deceased would have gone in shock and even if he would have run, at the most for, four or five spaces and would have been fallen down, and, therefore, the ld. trial judge has rightly come to the conclusion that the evidence of PW-2 Ex. 24 Gandabhai Maganji was doubtful. Same is the case with second eye witness PW-3 Ex. 25 Prahladji Pratapji, who also stated that after inflicting knife blows, deceased ran toward village Udalpur shouting "save" "save" and had fallen down near the cabin of one Govindbhai which is situated at about 169 feet from the scene of offence. He is chance witness. He come out of his house which is situated away from the scene of offence, for feeding his bullocks. He also stated that both the accused-respondents were chasing the deceased after inflicting the blows. This fact is also not probable because as per the medical evidence, it was very easy for the accused-respondents to catch hold of the deceased. In his evidence, about the weapon of the crime, this witness has offered contradictory version. Moreover, this witness states that at the place where the incident occurred, no marks of blood was found at that place and that is improbability. The ld. trial judge, therefore,

rightly disbelieved this witness also.

The third supporting witness is PW-4 ex. 26 Kacharaji Radhuji. Though he had not seen the incident, but according to him, while he was sitting at the Cabin of one Ranchhodji, he heard shouts "beat him" "beat him". While he came out, he witnessed that deceased was shouting pressing his hand on chest. Accused-respondents no. 1 and 2 were running toward Mehsana road. In his cross-examination, the witness admitted that he had not, in fact, witnessed anything, but he had heard this story from someone and, therefore, this witness was not believed by the trial court. Same is the case with other such witness, ex. 27 PW-5 Ranchhodji Madhaji, who also deposed like earlier witness PW-4 Ex. 26 - Kacharaji Radhuji, but ultimately Ranchhodji Madhaji also stated that he was called after the incident and he had not witnessed accused-respondents running away from the scene of offence.

Though the above ocular evidence on re-appreciation is not believable, the prosecution has tendered on record the evidence of discovery of knife at the instance of accused-respondent no. 1, which panchanama is at ex. 36 and which is dated 27.10.1985. Though for that, the prosecution has examined PW-10 Kanjibhai Ambalal and in his cross-examination, this witness admitted in panchanama ex. 36 that he had not stated that in his presence accused-respondent no. 1 told him that the accused-respondent no. 1 was prepared to show the place where he had hidden the knife and was prepared to discover the said knife. Moreover, the discovery of muddamal article no. 1 knife is from open place and, therefore, no reliance can be placed on the evidence of discovery. Same is the case with second panch PW-11 ex. 37 Khodaji Suraji, who failed to establish that the discovery was at the instance of the accused, who gave information that he had hidden the knife used in crime.

As stated above, the ld. trial judge rightly disbelieved the ocular evidence for the reasons mentioned above as well as the evidence of discovery, for the reasons mentioned aforesaid. The conclusion of the ld. trial judge is based on evidence on record and the same is neither perverse nor so erroneous by which failure of justice is caused. For the principles noted above, we are unable to agree with ld. APP to interfere with the finding of acquittal recorded by the ld. trial judge.

In the result, following order is passed:

The appeal fails and is hereby dismissed. Bail

bond of respondents-accused stands cancelled.

(B.J. SHETHNA, J.)

(J.R. VORA, J.)
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